

SIDE LETTER AGREEMENT
BETWEEN
THE CITY OF SAN JOSE
AND
THE SAN JOSE POLICE OFFICERS' ASSOCIATION

Patrol Staffing Retention Program

1. The City and the POA agree to implement a-the Patrol Staffing Retention Program ("PSRP") which shall be offered to certain sworn Police Officers and Police Sergeants of the San Jose Police Department ("SJPD") who are retirement-eligible members of the City's Police and Fire Department Retirement Plan. The PSRP would be a temporary program, and it will end on xx. The PSRP is meant to help retain certain veteran, sworn Police Officers and Police Sergeants with the SJPD beyond retirement eligibility under the Police and Fire Department Retirement Plan on a temporary basis in order to better-meet the staffing needs of the Patrol division of the Bureau of Field Operations.

2. Definitions

A. PSRP Participant – A PSRP Participant is an eligible individual who has been selected to participate in the PSRP program and who continues to participate in the program (i.e., whose participation has not terminated). Participation in the PSRP will be limited to active sworn Police ~~Officers and Sergeant~~employees who via an irrevocable election, agree and are selected by the SJPD to work in basic-perform patrol functions as a Police Officer or Police Sergeant within the SJPD on a limited term basis (see 2.E, below). Participants must be retirement-eligible members of the Police and Fire Department Retirement Plan, and must satisfy the conditions for participation described in Section 4 below ("Eligible Member").

(i) The number of these sworn ~~employees~~officers that may participate in the program will be based on the needs and discretion of the San Jose Police Department SJPD, and shall not exceed xx percent (xx %) of the current vacancies for active employees for the classifications of Police Officer and Police Sergeant within the SJPD.

(ii) A sworn employee who is selected to participate in the PSRP will enter a new Police Officer or Police Sergeant classification exclusive to the PSRP. These classifications will be created by the City for the purpose of the PSRP and shall be deemed as terminal classifications which will no longer be filled at the expiration or termination of the PSRP.

B. Active Status – A PSRP Participant is deemed to be on active status under the same conditions as an active employee who is not in the PSRP.

C. Cost Neutral – TBD

D. PSRP Start Date – The date upon which a PSRP Participant's participation in the PSRP is effective, consistent with the rules set by the Police and Fire Department Retirement Plan Retirement Board. This will be the same date as when the employee enters the new Police Officer or Police Sergeant classification exclusive to the PSRP per Section 2(A)(ii) above.

E. PSRP Participation Period – The time period a PSRP Participant agrees to participate in the PSRP, with a maximum of three (3) calendar years from the PSRP Start Date. For purposes of the program, the eligible PSRP Participation Period shall be defined as the total number of times the Retirement Plan posts monthly service amounts to the participant's PSRP account as determined by the terms of the Police and Fire Retirement Plan terms reflected in the PSRP agreement.

F. PSRP Account – The separate bookkeeping account which shall be established with the Police and Fire Department Retirement Plan on behalf of each PSRP Participant. See Section 6 below for additional information.

3. Duration of the PSRP

A. Unless extended, suspended or terminated pursuant to the terms of this agreement, the PSRP shall be offered for a period of five (5) years beginning xx and ending xx. Once enrolled, a Participant may participate in the PSRP for a maximum of three (3) calendar years. All PSRP participants agreements shall terminate when the PSRP sunsets-ends on xx, regardless of when the participant began participationenrolled in the PSRP.

B. Annual Reports.

a. (i) The PSRP is intended to be cost neutral (or to produce cost savings) when considering both the additional cost of the program and the City's actuarial liability for defined benefit pension benefits. The Police and Fire Department Retirement Plan's consulting actuary shall annually prepare and submit to City Council a report on or before xx. This report shall include but not be limited to, an assessment of whether the PSRP results in cost-savings to the City.

b. (ii) Simultaneous with the annual actuarial report, the SJPd shall annually prepare and submit to City Council a report on or before xx. This report shall include an assessment of whether the PSRP results in improvements to the Patrol division of the SJPd, including but not limited to: improved response times to calls; improvements in the capacity to investigate lower-level, misdemeanor crimes; and other service-level improvements.

2. C. 5-Year Summary Reports

a. (i) On or before xx, the Police and Fire Department Retirement Plan's consulting actuary shall prepare and submit to City Council a final report. This report shall include an assessment of whether the PSRP achieved the goal of cost-neutrality (or cost-savings) to the City.

b. (ii) On or before xx, the SJPd shall prepare and submit to City Council a final report. This report shall include an assessment of whether the PSRP results in improvements to the Patrol division of the SJPd, including but not limited to: improved response times to calls; improvements in the capacity to investigate lower-

level, misdemeanor crimes; and other service-level improvements.

3. D. Extension of the PSRP. At its sole discretion after consideration of the final reports of the Police and Fire Department Retirement Plan's consulting actuary and of the SJPD pursuant to Section 3(C) above, the City Council may extend the end date of the PSRP to a different specified end date. An extension of the PSRP shall be at the City Council's sole discretion.

4E. Early Termination of the PSRP. The City Council reserves the right to, by adopting an Ordinance amending the Police and Fire Department Retirement Plan, suspend or terminate the PSRP at any time regardless of the results from the above of the two analyses reports described in either Section 3(B) or Section 3(C) above. If the City terminates the PSRP prior to xx, no Participant shall have any right to continue to participate in the PSRP, continue to receive credits to his or her PSRP Account, or to complete his or her PSRP agreement after the PSRP terminates.

4. Eligibility for Participation in the PSRP

A. During the time period when the PSRP is active in effect (including any extension which may be approved by the City Council), an active, sworn employee of the San Jose Police Department Police Officer or Sergeant in a Patrol position is eligible for selection to participate in the PSRP if he or she:

4. (i) Is a service retirement-eligible member of the Police and Fire Department Retirement Plan as defined in the Municipal Code; and

(ii) Is able to perform the essential patrol functions of the classification of Police Officer or Police Sergeant in a Patrol position with or without reasonable accommodation;

(iii) Has not applied for, or have an unresolved, application for disability retirement at the time of entry into the PSRP; and

2. (iv) Has submitted an irrevocable election as specified in Section 4(D) below.

B. The SJPD shall certify to the Police and Fire Department Retirement Plan that the sworn employee is an active employee capable of performing the essential functions of the Police Officer or Police Sergeant classifications in a Patrol position at the time of entry into the PSRP, and the Police and Fire Department Retirement Plan shall rely on the SJPD's certification to determine PSRP eligibility.

C. To become a PSRP Participant, an Eligible-eligible Member-employee must voluntarily make a one-time irrevocable election to participate in the PSRP in accordance with procedures established under the Police and Fire Retirement Plan. Eligible Members-employees shall only be permitted to participate in the PSRP once-one time.

D. An Eligible Member who elects to participate in the PSRP shall, on a form provided by the

Police and Fire Department Retirement Plan, voluntarily and irrevocably:

1. (i) Determine a PSRP Start Date ~~date upon which his or her participation in the PSRP will begin~~, consistent with the rules set by the Police and Fire Department Retirement Plan Retirement Board ~~("PSRP Start Date")~~.
2. (ii) Agree that his or her service retirement benefit formula (benefit accrual rate multiplied by years of service), all other eligibility conditions, and eligibility for survivor benefits and option elections, shall be set based on his or her service as of his or her PSRP Start Date. Service under the PSRP will not affect the PSRP Participant's service retirement benefit, and that benefit shall not be subject to later modifications after ~~on~~ his or her PSRP Start Date.
3. (iii) Agree that he or she shall stop accruing benefits and stop earning service credit under the Police and Fire Department Retirement Plan on his or her PSRP Start Date.
4. (iv) Agree to pay in full all mandatory redeposits before his or her PSRP Start Date.
5. (v) Acknowledge that all elective payments and elective purchases of service must be completed before his or her PSRP Start Date in order for such payments or purchases to be included in the calculation of his or her service retirement allowance. A PSRP Participant must further acknowledge that he or she may not repay an account shortage or make an elective purchase of service after his or her PSRP Start Date.
6. (vi) Agree that, upon his or her PSRP Start Date, he or she waives any right to receive a refund of contributions that may have been available if he or she had not elected to participate in the PSRP.
7. (vii) Agree to complete the appropriate election forms under the Police and Fire Retirement Plan to receive a service retirement allowance from the Retirement Plan upon termination of his or her PSRP participation in the manner provided by this agreement and the terms of the Police and Fire Retirement Plan.
8. (viii) Designate a beneficiary for the PSRP distribution, if any, payable upon his or her death. A PSRP Participant may change his or her beneficiary designation prior to death in accordance with procedures established by the Retirement Board for the Police and Fire Retirement Plan. The PSRP beneficiary designation shall not apply to any other benefit that may be available from the Retirement Plan.
9. (ix) Elect to participate in the PSRP for a period of time no less than xx and up to not more than the maximum of three (3) calendar years ("PSRP Participation Period"). ~~For purposes of the program, the eligible PSRP Participation Period shall be defined as the total number of times the Retirement Plan posts monthly service amounts to the participant's PSRP account as determined by the terms of the Police and Fire~~

Retirement Plan terms reflected in the PSRP agreement.

10. (x) Agree to retire and terminate employment as an active sworn Police Officer or Sergeant capable of performing the essential functions of the Police Officer or Sergeant classifications in a Patrol function with or without reasonable accommodation with the City on or before the last day of his or her PSRP Participation Period.

5. Wages and Benefits

A. Unless otherwise noted, PSRP Participants shall be treated as retirees for purposes of participation in the Police and Fire Department Retirement Plan.

B. For all other purposes, such as pay and benefits (other than pension benefits), PSRP Participants shall be treated the same as active employees and shall be entitled to the benefits provided in the Memorandum of Agreement (MOA) between the San Jose Police Officer's Association (POA) and the City that is in effect at the time of participation unless otherwise noted.

(i) Leave and Leave Payouts:

a. Any lump sum amounts an employee would otherwise be eligible to receive had they terminated employment with the City, including but not limited to, vacation payouts, compensatory time payouts, and sick leave payouts, will be paid to a PSRP Participant on the paycheck associated with the second full pay period after the employee's PSRP Start Date; such payouts will be at the employee's rate of pay for the pay period prior to their PSRP Start Date. This payout may not be deposited or credited to the PSRP account.

b. A PSRP Participant will have no available or accrued leaves at his or her PSRP Start Date, similar to a new employee of the City.

b. Upon entry into the PSRP, the PSRP Participant will accrue leave pursuant to the terms in the POA MOA and at the same accrual rates as the pay period immediately preceding the employee's PSRP Start Date.

c. Upon termination of participation in the PSRP, the PSRP participant will be eligible to receive any lump sum amounts, including but not limited to, vacation payouts and compensatory time payouts, consistent with what other employees in classifications represented by the POA who terminate from the City would be eligible for. Such payouts shall be at the rate of pay at the time of the termination of participation in the PSRP; will be paid on the paycheck associated with the second full pay period after they leave City service; and may not be deposited or credited to the PSRP account. There shall be no sick leave payout pursuant to the POA MOA as any sick leave accrued after July 6, 2013, is not eligible for payout.

C. Each PSRP Participant shall receive the top step rate of pay for the classification he or she occupies (Police Officer or Police Sergeant) while participating in the PSRP as provided in

the ~~Memorandum of Agreement~~MOA between the ~~San Jose Police Officers' Association~~(POA) and the City that is in effect at the time of participation.

D. A PSRP Participant shall be subject to the same City and Department policies, rules and regulations as an active employee.

E. Employment during the PSRP Participation Period shall not be credited as service for purposes of determining a Member's retirement benefit under the Retirement Plan and compensation paid during ~~such period~~the PSRP Participation Period shall not be taken into account in determining a Member's retirement benefit under the Retirement Plan.

6. PSRP Accounts

A. "PSRP Account" means the separate bookkeeping account which shall be established with the Retirement Plan on behalf of each PSRP Participant. All benefits earned by a PSRP Participant on account of participation in the PSRP shall be accounted for in the PSRP Account. The Retirement Plan will establish PSRP Account for each PSRP Participant. The Plan will not create a separate fund or otherwise segregate assets for this purpose. The PSRP Accounts established will merely be a notional bookkeeping account with the purpose of accounting for the Participant's PSRP benefits.

B. Each Participant's PSRP Account shall be credited with the following amounts:

1. (i) An amount, credited monthly, which is equal to the monthly service retirement allowance to which the Participant would be entitled using the formula in the Police and Fire Department Retirement Plan as if he or she had retired on ~~his or her PSRP Start Date~~the effective date of his or her becoming a Participant in the PSRP.
2. (ii) An amount, credited monthly, equal to any adjustment to the monthly service retirement allowance to which the Participant would be entitled, as described in number 1 above for any cost of living adjustment the Participant would be entitled to receive based on that monthly service retirement allowance.
3. (iii) Interest in an amount equal to one-half ($\frac{1}{2}$) the annual fund return rate for the Retirement Plan for the current year will be credited to the participant's PSRP account annually. If the fund return rate for the Retirement Plan is negative in a given year, no interest shall be credited to the Participant's PRSP Account for that year. No interest shall accrue after participation in the PSRP ceases. The Parties understand and agree that the interest paid on the PSRP Account is intended not to create any additional unfunded liability. In the event that the interest in the PSRP Account creates an additional unfunded liability, the interest rate shall be adjusted to avoid or eliminate that additional unfunded liability.
4. (iv) During participation in the PSRP, no right to claim payment of the funds in the PSRP Account shall accrue to any party, including the PSRP Participant. Upon termination of a Participant's participation in the PSRP, the funds in the PSRP Account shall not be subject to execution, garnishment, attachment, or any other process whatsoever

by any person in the same manner as any other Retirement plan benefit, as provided in Section 3.36.080 of the Municipal Code.

5. (v) Lump sum amounts, including but not limited to those representing compensatory time, accrued vacation, or accrued sick pay shall not be credited to a Participant's PSRP Account.

7. Required Contributions

- A. Upon an Eligible—eligible Member's—employee's enrollment in the PSRP, the PSRP participant shall be treated as a retiree for purposes of participation in the Police and Fire Department Retirement Plan. Accordingly, both the Participant's and the City's contributions to the Retirement Plan shall cease.
- B. The Participant and the City shall continue to pay their contributions to retiree healthcare. Employment during the period of participation in the PSRP shall not be credited as service for purposes of determining a Member's retirement benefit under the Retirement Plan and compensation paid during such period shall not be taken into account in determining a Member's retirement benefit under the Retirement Plan.
- C. The Retirement Board shall determine the City's contributions as required by Part 10 of Chapter 3.36 of the Municipal Code. Under the Municipal Code, no required contributions will be posted to any PSRP Participant's Account.

8. Benefits upon Completion of the PSRP

- A. After a PSRP Participant ceases participation in the PSRP, he or she will be automatically retired for service and will thereafter receive a monthly service retirement allowance from the Retirement Plan as calculated at the time of entry into the PSRP, including adjustments for cost of living as provided in the Municipal Code.
- B. After a PSRP Participant ceases participation in the PSRP, an amount equal to the accumulated sums posted to the Participant's PSRP Account will be distributed to him or her, subject to Retirement Board rules and Internal Revenue Service regulations.
- C. After a PSRP Participant has received any distribution of his or her PSRP Account as set forth above, if, for any reason, a disability retirement allowance under the Retirement Plan is granted, the PSRP Participant shall be treated as if he or she never participated in the PSRP, and the Retirement Plan shall offset the amount that has been distributed to the Participant from his or her PSRP Account from any future disability retirement payments.
- D. Notwithstanding anything to the contrary, a PSRP participant's community property obligations under applicable laws will not be affected by the PSRP beneficiary designation.

9. Disability Retirement Allowance Granted During PSRP Participation

Participation in the PSRP terminates when the PSRP Participant's application for disability retirement under the Retirement Plan is approved by the Independent Medical Panel, and no amount shall be paid to the PSRP Participant from his or her PSRP Account. The PSRP Participant shall be paid a service connected or nonservice connected disability retirement allowance as if he or she had never participated in the PSRP.

10. Death during PSRP Participation

A. If the decedent has a qualified surviving spouse, domestic partner, or dependents as provided under the Police and Fire Retirement Plan, then:

4. (i) Within 180 days of a PSRP Participant's service-connected death, the qualified surviving spouse, domestic partner, or dependents determined in accordance with the provisions under the Police and Fire Retirement Plan regarding service-connected death benefits, shall have the right to elect to receive either:
 - i. a. Survivor benefits provided in the Municipal Code for a service-connected death, and not receive any benefit from the Participant's PSRP Account, or
 - ii. b. Non-service connected death benefits provided in the Municipal Code and the benefits from the Participant's PSRP Account distributed in accordance with the Participant's validly filed PSRP beneficiary designation.
2. (ii) Subject to the election in 1. above with respect to a service-connected death, a Participant's PSRP Account shall be distributed in accordance with the Participant's validly filed PSRP beneficiary designation upon the PSRP Participant's death. Qualified surviving spouses, domestic partners, and dependents shall also receive any continuation benefits provided in the Municipal Code.
3. (iii) If no continuation benefit is payable to a qualified survivor under the Police and Fire Retirement Plan, then active death benefits shall be paid in accordance with the Police and Fire Retirement Plan terms, and the Participant's PSRP Account shall be paid to the Participant's validly designated PSRP beneficiary.
4. (iv) A Participant's PSRP Account shall be paid to the PSRP Participant's estate if the PSRP designated beneficiary predeceases him or her.

11. Conditions of Continued PSRP Participation

A. AA PSRP Participant's violation of any term or condition of the PSRP ~~agreement~~ or any other City and/or ~~departmental~~ Departmental policies as determined by the City shall terminate the Participant's PSRP participation and, upon retirement, the Participant shall receive benefits from the Retirement Plan as if he or she never participated in the PSRP.

B. A PSRP Participant is eligible for receiving credit into his or her PSRP Account pursuant to Section 6 above under the same terms and conditions an active employee would have

~~otherwise received retirement service credit. For example, an active employee on unpaid status is not earning retirement service credit for the time they are unpaid; similarly, if a PSRP Participant is on unpaid status during the PSRP Participation Period, the PSRP Participant will not receive credit into his or her PSRP Account for the time they are unpaid. During any period when a PSRP Participant is not on active status as a sworn Police Officer or Sergeant in the Patrol function of the SJPD, no amounts shall be credited to the Participant's PSRP Account.~~ It shall be the responsibility of the SJPD to notify the Retirement Plan whenever a PSRP Participant ceases to meet the requirements of such active status.

12. Compliance with Applicable Provisions of the Internal Revenue Code

It is intended that the PSRP shall not jeopardize the tax-qualified status of the Retirement Plan. The Retirement Board for the Police and Fire Retirement Plan shall have the authority to adopt rules and regulations required for the PSRP to maintain compliance with applicable laws and regulations. In the event that the PSRP is determined to jeopardize the tax-qualified status of the Retirement Plan, the PSRP shall be immediately and automatically suspended.

13. Authority of the Retirement Board

In addition to the authority granted elsewhere in the Municipal Code, the Retirement Board for the Police and Fire Department Retirement Plan shall have the authority to adopt rules and regulations to administer the PSRP as part of the Retirement Plan in accordance with the Municipal Code.

This Agreement shall not establish precedent for future agreements and shall not obligate the City to enter into agreements in the future related to this issue. This Side Letter Agreement shall become effective when signed by all the parties below:

FOR THE CITY:

Jennifer Schembri Date
Director of Employee Relations

Edgardo Garcia
Date

FOR THE UNION:

Paul Kelly
President, SJPOA

James Gonzalez Date

Chief of Police

Vice President, SJPOA

Gregg Adam
SJPOA Counsel

Date

CONFIDENTIAL DRAFT